

NPS/FWS Ethics Train-the-Trainer

September 10, 2004

Today's Topics

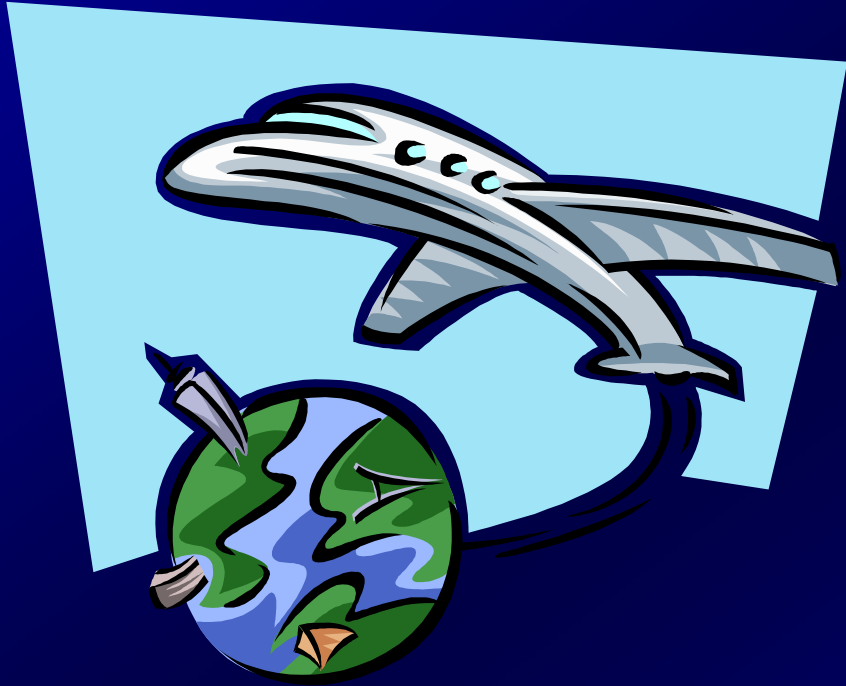
- Fundraising
- Gifts of Travel
- Post Employment
- Serving on Outside Boards

**AND YOUR
QUESTIONS/CONCERNS!!**

Fundraising

- **On Government property/time**
- **Employee Association Fundraising**
- **For the Combined Federal Campaign (CFC)**

Gifts of Travel & Accommodations



- Acceptance of travel from a non-federal source
 - 31 U.S.C. § 1353
 - DI - 2000

31 USC § 1353 Key Points

- **Gift is to the agency, not the employee;**
- **Gift is offered by the source, not solicited by the employee;**
- **Reimburses travel that is of mutual interest to the agency and the non-federal source.**

31 USC § 1353 Key Points

Okay to use for:

- conferences
- seminars
- speaking engagements
- symposia
- training courses

NOT for promotional vendor training

31 USC § 1353 Key Points

Do **NOT** Use for travel to carry out an essential agency mission function including inspections, hearings, audits and/or negotiations.

5 CFR § 2635.204(g) – Widely Attended Gatherings

- Permits *employee* acceptance of free attendance:
 - When assigned to speak at an event, serve as a panel member, or present information, free attendance on the day of presentation from the sponsor of the event is not considered a gift to the employee or agency.

Widely Attended Gatherings

- When a determination has been made that an employee's attendance is in the interest of the agency (to further agency programs and operations), *employee* may accept unsolicited offer of free attendance from event sponsor

Widely Attended Gatherings

- **Events are widely attended if it is expected that a large number of persons will attend and represent a variety of viewpoints.**
- **If offer comes from someone other than the sponsor, the event must be attended by at least 100 people, and the value of attendance must be less than \$285.**

Widely Attended Gatherings

- **Attendance authorized by ethics official and supervisor**
- **DI-1958**

Post Employment

- **18 U.S.C. 207**
 - 207 (a)(1) Lifetime bar on representations on behalf of others
 - 207 (a)(2) Two-year bar on representations on behalf of others
 - 207(c) One-year bar on communication for former senior officials

Post Employment Restrictions

18 U.S.C. § 207

- **Designed to curb “switching sides”**
- **DOES NOT prohibit acceptance of employment**
- **MAY restrict scope of former employee’s representation activities**

18 U.S.C. § 207(a)(1) Lifetime Ban

- **May not:**
 - **Communicate/appear on behalf of another**
 - **With “intent to influence”**
 - **Regarding a “particular matter”**
 - **Involving specific parties**
 - **Where participated “personally and substantially” as Federal employee**
 - **Behind-the-scenes assistance permitted**

Representational Restrictions

Definitions

- **Particular matter involving specific parties -- includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, or investigation. Generally, does not include rulemaking, formulation of general policy, standards or objectives, or other matters of general application.**

Representational Restrictions

Definitions

- **Intent to influence -- seeking some discretionary action, ruling, benefit, or approval. Does not include purely social contacts or requesting publicly available information.**

Representational Restrictions

Definitions

- Participate personally and substantially -- to participate directly and significantly by decision, approval, recommendation, rendering of advice or investigation. Includes actions of a subordinate if actually directed by the former employee.

18 U.S.C. § 207(a)(2) - 2-Year Ban

- May not, within 2 years of termination of Government service
 - Communicate/appear on behalf of another
 - With “intent to influence”
 - Regarding a “particular matter”
 - Involving specific parties
 - Under “official responsibility” during last year of Government service
- Behind-the-scenes assistance permitted

Representational Restrictions

Definitions

- **Official responsibility -- direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.**

Representational Restrictions

Definitions

- **Administrative authority -- planning, organizing, and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter, such as regularity of budgeting procedures, public or community relations aspects, or EEO considerations.**

18 U.S.C. § 207(c)

1-Year Cooling-Off Period

- Applies to former senior employees (personnel whose basic pay exceeded 86.5 percent of the rate for level II of the Executive Schedule (EL II) – (currently \$136,757 in 2004).
- Prohibits communication or appearance before former agency, on behalf of another with intent to influence, on any matter where official action is sought

1-Year Cooling-Off Period

- **Behind-the-scenes assistance permitted**
- **Communications to other DOI components permitted (except former OS employees)**

New Procurement Integrity Act

- **Applies to employees who retire on or after 1 January 1997**
- **Bars acceptance of compensation from contractor for 1 year after certain participation in procurement of:**
 - **contracts, subcontracts, modifications, and other actions greater than \$10M**

Triggers

- **Served as Procuring Contract Officer, Source Selection Authority, Source Selection Evaluation Board Member, Chief of Financial or Technical Evaluation Team for procurement > \$10M**
- **Served as Program Manager, Deputy Program Manager, or Administrative Contracting Officer for procurement > \$10M**

Triggers

- **Personally made decision to:**
 - **award a contract, subcontract, modification, or task order > \$10M**
 - **establish overhead or other rates applicable to contract > \$10M**
 - **approve issuance of a contract payment > \$10M**
 - **pay or settle a claim > \$10M**

Serving on Outside Boards

- **18 USC § 208** - An employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, *he or any person whose interests are imputed to him under this statute has a financial interest*, if the particular matter will have a direct and predictable effect on that interest

18 U.S.C. § 208

Imputed Interests

- Spouse
- Minor children
- General partner
- *Organization in which the employee serves as officer, board member, employee*
- An organization with whom the employee is negotiating for employment

Partnerships

- **Recent Department of the Interior initiatives have stressed the use of partnerships with other Federal agencies and with private sector organizations as a desirable way to enhance the operations of our programs.**

Things to do When Establishing a Partnership

- **Prepare a written agreement (MOU)**
- **Authorize official time for employees to work on the partnership effort**
- **Determine whether employees should serve as officers in partnership organization in official capacity and follow appropriate conflict procedures**
 - **If NO service in official capacity, employee/officer must recuse from particular matters involving the partner organization**
 - **Employee serving as officer with partner organization in official capacity MUST obtain waiver signed by bureau head or DAEO**

Things to Avoid When Establishing a Partnership

Endorsing the Products or Services of the Partner Organization

Federal employees may not publicly endorse the products or services of private organizations nor may private organizations use appropriated funds to advertise. Such activities may result in the misuse of public office for private gain.

Things to Avoid When Establishing a Partnership

Soliciting Funds for your Programs from Partners

- Fund raising for Federal programs is prohibited unless authorized by law. There must be specific statutory authority for agencies to solicit money or other gifts that will supplement appropriated funds.
- May not solicit funds from prohibited sources.

Things to Avoid When Establishing a Partnership

Exerting control over fund raising by your Partner, unless authorized

- The Standards of Conduct prohibit employees from fund raising in their official capacity without specific statutory authority.
- If your agency has fund raising authority, contact Ethics Office or local Solicitor's Office regarding fundraising by partner for your agency.

Things to Avoid When Establishing a Partnership

Creating an Organization and Then Entering Into a Partnership With It

Under 31 U.S.C. 9102, a Federal Agency may establish or acquire a corporation to act as an agency only by or under a law of the United States specifically authorizing the action.

Things to Avoid When Establishing a Partnership

Accept any Compensation Other than Your Federal Salary

18 U.S.C. 209, prohibits dual compensation for services provided by Federal employees. In other words, only the United States can pay you for your work that you do as a Federal employee.

- Except bona fide awards programs**

Things to Avoid When Establishing a Partnership

Using Appropriated Funds for Lobbying

- **18 U.S.C. § 1913:** May not lobby Congress or any state, local, territorial or tribal government to favor or oppose any legislation, law or policy (except if it's your job)
- **No “grassroots” lobbying:** You may not tell someone to contact a state, local, territorial or tribal government regarding any pending legislation
- **Exceptions:** good faith responses to request for info
 - Strictly factual public statements without slant

Questions?

- **NPS** - Peggy Moran-Gicker
202-354-1981
- **FWS** - Carolyn Palmer
703-358-2135